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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/768,987	01/29/2004	Hugo Lenhard-Backhaus	BP-93	4565

7590 06/01/2005  
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EXAMINER
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HARVEY, DIONNE

ART UNIT	PAPER NUMBER
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2643

DATE MAILED: 06/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/768,987	Applicant(s) LENHARD-BACKHAUS, HUGO	
	Examiner Dionne N. Harvey	Art Unit 2643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☐ Claim(s) \_\_\_\_ is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☒ Claim(s) 7-11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. **Claim 5** is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Lines 1-3 of claim 5 recites "the first pivot axis are arranged centrally symmetrically relative to a Z axis..." Clarification is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1-6** are rejected under 35 U.S.C. 102(b) as being anticipated by **Jones (US 5,117,464)**.

Regarding claim 1, In **figure 1**, Jones teaches headphone comprising: a headband **10** ; two earpieces **30** (***two earpieces are adapted to be connected to clip 12 via clip 14, see column 4, lines 1-2***) each connected to the headband; wherein,

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when assuming a Cartesian coordinate system having a Z plane that is a symmetry plane of the headphone, having a Y plane that is positioned perpendicularly to the Z plane and extends through a center of the headband, and having an X plane that is positioned perpendicularly to the Z and planes at any desired height; in **figure 4**, and discussed in **column 2, lines 49-53**, Jones teaches that via ball-and-socket connection, the earpiece is adapted to move about a variety of pivot axis so as to rotate 360 degrees laterally to the ear, also to rotate 360 degrees laterally to the base **18**, as well as being able to pivot, rotate and swivel about all axis within a 360 degree circumference, as permitted by it's ball-and-socket construction, thereby reading on " a first pivot axis is provided between the headband and the earpiece, respectively, wherein the first pivot axis is positioned at an angle of at least 100 relative to the X, Y, and Z planes, respectively."

Regarding claim 2, since the earpiece is connected via a ball-and-socket connection, Jones teaches that the angle is at least 15 degrees.

Regarding claim 3, since the earpiece is connected via a ball-and-socket connection, Jones teaches that the first pivot axis is positioned relative to at least two of the X, Y, and Z planes at an angle of at least 20 degrees.

Regarding claim 4, since the earpiece is connected via a ball-and-socket connection, Jones teaches that the angle is at least 25 degrees.

Regarding claim 5, **as best understood with regard to the U.S.C 112 second paragraph rejection above**, since the earpiece is connected via a ball-and-socket connection, Jones teaches that the first pivot axes are arranged centrally symmetrically

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relative to axis of the Cartesian coordinate system, wherein the Z axis is a line of intersection of the Z plane and the Y plane.

Regarding claim 6, In **figure 1**, Jones teaches slide rods **28** further connecting the speaker element to the headband, reading on "comprising support arms connecting the headband and the earpieces"; Jones further teaches that via the ball and socket connection, the support arms **28** are rotateable about the first pivot axes, respectively.

### ***Allowable Subject Matter***

3. **Claim 7** is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**Claims 8-11** are objected to due to their dependency upon claim 7.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dionne N. Harvey whose telephone number is 571-272-7497. The examiner can normally be reached on 9-5:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz can be reached on 571-272-7499. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

D.H.



HUYEN LE  
PRIMARY EXAMINER